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CWA COMPLAINT

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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 NORTHERN CALIFORNIA RIVER
14 WATCH, a non-profit Corporation,

15 Plaintiff,

16 v.

17 CITY OF SANTA CLARA and DOES
18 1 -10, Inclusive,

19 Defendants
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CASE NO. 3:12-cv-05974 JSC

**CERTIFICATE OF SERVICE OF
COMPLAINT ON UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY AND UNITED STATES
DEPARTMENT OF JUSTICE**

DEPT. OF JUSTICE - ENRD
ENVIRONMENT DIVISION
12 NOV 29 P 2:48

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12 UNITED STATES DISTRICT COURT
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14 NORTHERN CALIFORNIA RIVER
15 WATCH, a non-profit Corporation,

16 Plaintiff,

17 v.

18 CITY OF SANTA CLARA; DOES
19 1-10, Inclusive,

20 Defendants.

CASE NO. 12 5974

**COMPLAINT FOR INJUNCTIVE
RELIEF, DECLARATORY RELIEF,
CIVIL PENALTIES, RESTITUTION
AND REMEDIATION
(Environmental - Clean Water Act - 33
U.S.C. § 1251, *et seq*)**

21 NOW COMES Plaintiff NORTHERN CALIFORNIA RIVER WATCH, a non-profit
22 Corporation, ("RIVER WATCH") by and through its attorneys, and for its Complaint against
23 Defendants CITY OF SANTA CLARA and DOES 1-10, Inclusive, ("DEFENDANT") states as
24 follows:

25 **I. NATURE OF THE CASE**

26 1. This is a citizen's suit for relief brought by RIVER WATCH under the Federal Water
27 Pollution Control Act, also known as the Clean Water Act ("CWA"), 33 U.S.C. § 1251 *et seq.*,
28 specifically Section 505, 33 U.S.C. § 1365, 33 U.S.C. § 1311, and 33 U.S.C. § 1342, to stop
DEFENDANT from repeated and ongoing violations of the CWA. These violations are detailed
in the Notice of Violations and Intent to File Suit dated July 17, 2012 ("CWA Notice") made part
of this pleading and attached hereto as EXHIBIT A.

2. RIVER WATCH alleges DEFENDANT is routinely violating the CWA by violating the
effluent discharge standards or limitations in the National Pollutant Discharge Elimination

1 System ("NPDES") Permit under which DEFENDANT's sewage treatment plant and associated
2 sewage collection system are regulated.

3 3. DEFENDANT owns the San José/Santa Clara Water Pollution Control Plant ("Plant")
4 through a Joint Powers Agreement with the City of San José. The City of San José operates the
5 Plant as the administering agency of the Joint Powers Agreement. The City of San José and
6 DEFENDANT individually own and operate their respective sewage collection systems.
7 DEFENDANT's operations of its sewage collection system is currently regulated under Order
8 No. R2-2009-0038, NPDES Permit No. CA0037842, (previously Order No. R2-2003-0085)
9 which also regulates the Plant. DEFENDANT's operation of its sewage collection system is also
10 regulated under the Statewide General Waste Discharge Requirements For Sanitary Sewer
11 Systems, Order No. 2006-003-DWQ ("Statewide WDR,") adopted on May 2, 2006.

12 4. Structural defects in DEFENDANT's sewage collection system, which allow the inflow
13 and infiltration of rain water and ground water ("I/I") into sewer lines, result in a buildup of
14 pressure which causes sewage system surface overflows ("SSOs"). Overflows caused by
15 blockages and I/I result in the discharge of raw sewage into gutters, canals, and storm drains
16 which are connected to adjacent surface waters including Stevens Creek, Saratoga Creek and
17 South San Francisco Bay, all waters of the United States. Numerous SSOs from
18 DEFENDANT's sewage collection system are documented in records on file with the Regional
19 Water Quality Control Board ("RWQCB") and in the California Integrated Water Quality
20 System reporting system, a number of which SSOs reached storm drains which discharge into
21 waters of the United States, in violation of the discharge prohibitions in DEFENDANT's
22 NPDES permit. Each violation of a limit in a duly authorized NPDES Permit is a violation of
23 the CWA.

24 5. As recorded in California Integrated Water Quality System's Public SSO Reports,
25 DEFENDANT's sewage collection system has experienced nineteen (19) SSOs during the
26 period between June 14, 2007 and June 10, 2012, with a combined volume of 7,041 gallons, 185
27 gallons of which reached surface waters, according to the DEFENDANT's field reports.
28 RIVER WATCH alleges that DEFENDANT's field reports systematically underestimate the

1 volume of SSOs, the volume of gallons from SSOs that reach surface waters; and, that
2 DEFENDANT inaccurately reports SSOs as not reaching surface waters.

3 6. RIVER WATCH alleges DEFENDANT has a history of non-compliance with the SSO
4 reporting requirements of the Statewide WDR governing the operation of sanitary sewer
5 systems. DEFENDANT is a permittee under the Statewide WDR, which requires that sewer
6 system operators report SSOs to the California Integrated Water Quality System, and include
7 in that reporting a credible estimate of the volume of any spill, the volume recovered and the
8 volume which reaches a surface water. RIVER WATCH alleges DEFENDANT regularly
9 underestimates the duration of its SSOs, thereby underestimating and inaccurately reporting the
10 volume of its SSOs and the volume which reaches gutters, canals and storm drains and adjacent
11 surface waters. DEFENDANT's Spill Reports, submitted to the State via the California
12 Integrated Water Quality System, Interactive SSO Reporting Program, routinely report the
13 estimated spill start time, the time the sewer agency was notified of the spill and the operator
14 arrival time as exactly the same. These equivalencies are highly unlikely and result in an under-
15 estimation of the duration of the spill. This common practice of underestimating the duration
16 of the spill leads to underestimating the volume of the spill. DEFENDANT's SSO records
17 generally do not indicate what method was used to estimate the total volume of the spill which
18 also calls into question the estimates of volume recovered and volumes which reach a surface
19 water, in violation of the CWA.

20 7. In addition to SSOs which discharge over land into surface waters, underground leakages
21 ("exfiltration") caused by pipeline cracks and other structural defects result in discharges to
22 adjacent surface waters via underground hydrological connections. RIVER WATCH alleges that
23 such discharges are continuous wherever ageing, damaged, structurally defective sewer lines in
24 DEFENDANT's sewage collection system are located adjacent to surface waters, including
25 Stevens Creek, Saratoga Creek and South San Francisco Bay. Surface waters and groundwater
26 become contaminated with fecal coliform, exposing people to human pathogens.
27 DEFENDANT's chronic sewage collection system failures, resulting in discharges in violation
28 of the CWA, pose a substantial threat to public health.

1 8. RIVER WATCH alleges DEFENDANT is also routinely violating the RWQCB's Water
2 Control Plan, known as the Basin Plan, Environmental Protection Agency ("EPA") regulations
3 codified in the Code of Federal Regulations, and toxics standards promulgated by the State
4 Water Resources Control Board in the course of DEFENDANT's operation of the Plant and its
5 sewage collection system, as described in the CWA Notice.

6 9. Under 33 U.S.C. § 1251(e), Congress declared its goals and policies with regard to public
7 participation in the enforcement of the CWA. 33 U.S.C. §1251(e) provides, in pertinent part:

8 *Public participation in the development, revision, and enforcement of any*
9 *regulation, standard, effluent limitation, plan or program established by the*
10 *Administrator or any State under this chapter shall be provided for,*
encouraged, and assisted by the Administrator and the States.

11 10. RIVER WATCH alleges DEFENDANT illegally discharges pollutants to waters which
12 are habitat for threatened or endangered species as that term is defined by both the California and
13 United States EPA.

14 11. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future violations,
15 the imposition of civil penalties, and other relief for DEFENDANT's violations of the terms of
16 its NPDES Permits and the CWA.

17 II. PARTIES

18 12. Plaintiff, NORTHERN CALIFORNIA RIVER WATCH, is a 501(c)(3) non-profit, public
19 benefit corporation duly organized under the laws of the State of California, with headquarters
20 and main office located in the City of Sebastopol, California. RIVER WATCH is dedicated to
21 protect, enhance and help restore the surface and subsurface waters of Northern California. Its
22 members live in Northern California including the City of Santa Clara where facilities under
23 DEFENDANT's operation and/or control is located.

24 13. Members of RIVER WATCH live nearby to waters affected by DEFENDANT's illegal
25 discharges as alleged in this Complaint. Said members have interests in the watersheds
26 identified in the CWA Notice and this Complaint, which interests are or may be adversely
27 affected by DEFENDANT's alleged violations. Said members use the effected waters and
28 effected watershed areas for domestic water, recreation, sports, fishing, swimming, hiking,

1 photography, nature walks, religious practices, and the like. Furthermore, the relief sought will
2 redress the injury in fact, likelihood of future injury and interference with the interests of said
3 members.

4 14. RIVER WATCH is informed and believes and on such information and belief alleges that
5 Defendant CITY OF SANTA CLARA is a City formed under California Government Code §
6 34000 *et. seq.*, with administrative offices located at 1500 Warburton Avenue, Santa Clara,
7 California.

8 15. RIVER WATCH is informed and believes and on such information and belief alleges that
9 Defendant DOES 1 - 10, Inclusive, respectively, are persons, partnerships, corporations and
10 entities, who are, or were, responsible for, or in some way contributed to, the violations which
11 are the subject of this Complaint or are, or were, responsible for the maintenance, supervision,
12 management, operations, or insurance coverage of the sewage collection facilities and operations
13 which are the subject of this Complaint. The names, identities, capacities, and functions of
14 Defendants DOES 1 - 10, Inclusive are presently unknown to RIVER WATCH, which shall seek
15 leave of court to amend this Complaint to insert the true names of said DOES Defendants when
16 the same have been ascertained.

17 III. JURISDICTIONAL ALLEGATIONS

18 16. Subject matter jurisdiction is conferred upon this Court by Section 505(a)(1) of the CWA,
19 33 U.S.C. § 1365(a)(1), which states in part,

20 "any citizen may commence a civil action on his own behalf against any
21 person . . . who is alleged to be in violation of (A) an effluent standard or
22 limitation . . . or (B) an order issued by the Administrator or a State with
23 respect to such a standard or limitation." For purposes of Section 505, "the
24 term 'citizen' means a person or persons having an interest which is or may be
25 adversely affected."

26 17. Members and supporters of RIVER WATCH reside in the vicinity of, derive livelihoods
27 from, own property near, and/or recreate on, in or near and/or otherwise use, enjoy and benefit
28 from the waterways and associated natural resources into which DEFENDANT discharges
pollutants as alleged in this Complaint, or by which DEFENDANT's operations adversely affect
their interests, in violation of CWA § 301(a), [33 U.S.C. § 1311(a),] CWA § 505(a)(1), [33

1 U.S.C. § 1365(a)(1)] and CWA § 402, [33 U.S.C. § 1342]. The health, economic, recreational,
2 aesthetic and environmental interests of RIVER WATCH and its members may be, have been,
3 are being, and will continue to be adversely affected by DEFENDANT's unlawful violations as
4 alleged herein. RIVER WATCH and its members contend there exists an injury in fact to them,
5 causation of that injury by DEFENDANT's complained of conduct, and a likelihood that the
6 requested relief will redress that injury.

7 18. Pursuant to Section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A), notice of the
8 CWA violations alleged in this Complaint was given more than sixty (60) days prior to
9 commencement of this lawsuit, to: (a) DEFENDANT, (b) the United States EPA, Federal and
10 Regional, and (c) the State of California Water Resources Control Board.

11 19. Pursuant to Section 505(c)(3) of the CWA, 33 U.S.C. § 1365(c)(3), a copy of this
12 Complaint has been served on the United States Attorney General and the Administrator of the
13 Federal EPA.

14 20. Pursuant to Section 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), venue lies in this
15 District as the sewage collection system and facilities under DEFENDANT's operation and/or
16 control, and the watersheds and lands where illegal discharges occurred which are the source of
17 the violations complained of in this action, are located within this District.

18 **IV. GENERAL ALLEGATIONS**

19 RIVER WATCH incorporates by reference all the foregoing as though the same were
20 separately set forth herein.

21 21. DEFENDANT provides sewerage service to a population of approximately 110,000
22 within the DEFENDANT's city limits. DEFENDANT's sanitary sewage system serves
23 residential customers as well as commercial and industrial users. The sewage collection system
24 consists of approximately 270 miles of sewer mains. Private property owners own the entire
25 length of the service lateral associated with their property. DEFENDANT maintains as a public
26 service the lower portion – from the property line cleanout to the main line – provided a property
27 line cleanout exists and DEFENDANT is made aware of any structural defects or overflows.
28 DEFENDANT's sanitary sewage system also includes two (2) metered pump stations and four

1 (4) smaller, un-metered pump stations. The Santa Clara City Council is the governing body of
2 DEFENDANT's sewer utility. DEFENDANT's sewage collection system includes sewer lines
3 which are now approximately one hundred (100) years old. A substantial portion of the sewer
4 lines are fifty (50) years old or older.

5 22. RIVER WATCH alleges that structural defects in DEFENDANT's sewage collection
6 system allow the inflow of rainwater and groundwater into sewer pipelines, which results in
7 pressure creating surface overflows of untreated sewage to adjacent United States waters, as
8 well as underground leakage of untreated sewage to adjacent United States waters.

9 23. RIVER WATCH alleges DEFENDANT regularly underestimates the volume and
10 duration of SSOs and the volume of untreated sewage which reaches a surface water, in violation
11 of the Statewide WDR which is incorporated into DEFENDANT's NPDES Permit. Any
12 violation of an NPDES Permit is a violation of the CWA.

13 24. All illegal discharges and activities complained of herein occur in the waterways
14 identified in this Complaint and in the CWA Notice, all of which are waters of the United States,
15 as well as at the locations identified in detail in the CWA Notice.

16 25. The RWQCB has determined that the watershed areas and affected waterways identified
17 in the CWA Notice and this Complaint are beneficially used for drinking water, water contact
18 recreation, non-contact water recreation, fresh water habitat, wildlife habitat, preservation of rare
19 and endangered species, fish migration, fish spawning, industrial service supply, navigation, and
20 sport fishing.

21 **V. STATUTORY AND REGULATORY BACKGROUND**

22 26. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants
23 from a "point source" into the navigable waters of the United States, unless such discharge is in
24 compliance with applicable effluent limitations as set by the EPA and the applicable State
25 agency. These limits are to be incorporated into a NPDES permit for that point source
26 specifically. The effluent discharge standards or limitations specified in a NPDES permit define
27 the scope of the authorized exception to 33 U.S.C. § 1311(a) , such that violation of a permit
28 limit places a polluter in violation of 33 U.S.C. § 1311(a) and thus in violation of the CWA.

1 Additional sets of regulations are set forth in the Basin Plan, the Code of Federal Regulations
2 and other regulations promulgated by the EPA and the State Water Resources Control Board.
3 Section 301(a) of the CWA prohibits discharges of pollutants or activities not authorized by, or
4 in violation of an effluent standard or limitation or an order issued by the EPA or a State with
5 respect to such a standard or limitation including a NPDES permit issued pursuant to Section 402
6 of the CWA, 33 U.S.C. § 1342. The sewage collection system piping and lines owned and
7 operated by DEFENDANT are point sources under the CWA.

8 27. The affected waterways detailed in this Complaint and in the CWA Notice are navigable
9 waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. §
10 1362(7).

11 28. The Administrator of the EPA has authorized the RWQCB to issue NPDES permits,
12 subject to specified conditions and requirements, pursuant to Section 402 of the CWA, 33 U.S.C.
13 § 1342.

14 29. DEFENDANT's sewage collection system is regulated under Order No. R2-2009-0038,
15 NPDES Permit No. CA0037842 (previously Order No. R2-2003-0085), NPDES Permit No.
16 CA0037842.

17 VI. DEFENDANT'S VIOLATIONS

18 RIVER WATCH incorporates by reference all the foregoing as though the same were
19 separately set forth herein.

20 30. RIVER WATCH alleges that DEFENDANT's violations of the terms of its NPDES
21 Permits as detailed above and in the CWA Notice, are violations of CWA § 301(a), 33 U.S.C.
22 § 1311(a). The violations are established in RWQCB files for DEFENDANT's sewage treatment
23 and collection facilities, as well as in studies conducted by DEFENDANT in compliance with
24 orders from regulatory agencies.

25 31. The enumerated violations are detailed above and in the CWA Notice incorporated by
26 reference herein designating the section of the CWA violated, describing the activity constituting
27 a violation and identifying the location of the discharge points.

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VII. CLAIM FOR RELIEF

**Violation of CWA - 33 U.S.C. § 1251 *et seq.*, 33 U.S.C. §§ 1342 (a) and (b)
and 33 U.S.C. § 1311**

Discharge of Pollutants from Point Sources to United States Waters

RIVER WATCH realleges and incorporates by reference the allegations of Paragraphs 1 through 31 above including the CWA Notice as though fully set forth herein. RIVER WATCH is informed and believes and based upon such information and belief alleges as follows:

32. DEFENDANT has violated and continues to violate Section 301 of the CWA, 33 U.S.C. § 1311, as evidenced by the discharges of pollutants from a point source in violation of limits set forth and mandated in Order No. R2-2009-0038, NPDES Permit No. CA 0037842, and Order No. R2 2003-0085, NPDES Permit No. CA 0037842.

33. The violations of DEFENDANT as alleged in this Complaint are ongoing and will continue after the filing of this Complaint. RIVER WATCH alleges herein all violations which may have occurred or will occur prior to trial, but for which data may not have been available or submitted or apparent from the face of the reports or data submitted by DEFENDANT to the RWQCB or to RIVER WATCH prior to the filing of this Complaint. RIVER WATCH will amend this Complaint if necessary to address DEFENDANT's violations of the CWA which may occur after the filing of this Complaint. Each violation of a NPDES Permit is a separate violation of the CWA.

34. RIVER WATCH alleges that without the imposition of appropriate civil penalties and the issuance of appropriate equitable relief, DEFENDANT will continue to violate the CWA with respect to the enumerated discharges and releases as alleged herein. Further, that the relief requested in this Complaint will redress the injury to RIVER WATCH and its members, prevent future injury, and protect those members' interests which are or may be adversely affected by DEFENDANT's violations of the CWA.

VIII. PRAYER FOR RELIEF

RIVER WATCH prays this Court grant the following relief:

35. Declare DEFENDANT to have violated and to be in violation of the CWA;

1 36. Issue an injunction ordering DEFENDANT to immediately operate its sewage collection
2 system in compliance with the CWA.

3 37. Order DEFENDANT to perform the following remedial measures:

4 A. Condition Assessment by way of closed circuit television ("CCTV") inspection
5 of gravity mains, manholes and pipe connections at the manhole, of
6 DEFENDANT's sewer lines in the sewage collection system located within two
7 hundred (200) feet of surface waters, including gutters, canals and storm drains
8 which discharge to surface waters, to be completed within a period of five (5)
9 years. After CCTV inspection occurs, pipe conditions to be assigned a grade
10 based on the Pipeline Assessment and Certification Program ("PACP") rating
11 system, developed by the National Association of Sewer Service Companies.

12 B. Condition Assessment of all sewer lines in DEFENDANT's sewage collection
13 system with the exception of sewer lines located within two hundred (200) feet of
14 surface waters, to be completed within a period of ten (10) years.

15 C. Repair or replacement of all sewer lines in DEFENDANT's sewage collection
16 system located within two hundred (200) feet from surface waters, including
17 gutters, canals and storm drains which discharge to surface waters, which have
18 been CCTV'd within five (5) years and which are considered to be significantly
19 defective – receiving a PACP rating of five (5);

20 D. Modification of DEFENDANT's SSO report form to include:

21 i. The method or calculation used for estimating total spill volume,
22 estimating spill volume that reached surface waters and estimating spill
23 volume recovered.

24 ii. A listing of nearby residents or business operators who have been
25 contacted to attempt to establish the SSO start time, duration, and flow rate.

26 iii. Photographs of the manhole flow at the SSO site and the San Diego
27 Method array, if applicable to the SSO; or other photographic evidence that
28 may aid in establishing the spill volume.

1 E. A requirement for water quality sampling and testing whenever it is estimated that
2 fifty (50) gallons or more of untreated or partially treated waste water from
3 DEFENDANT's sewer lines enters surface waters. Constituents tested for to
4 include: Ammonia, Fecal Coliform, BOD and a CAM 17 toxic metals analysis. If
5 any of said constituents are found at higher levels in the point of discharge sample
6 and the downstream sample than in the upstream sample, DEFENDANT shall
7 determine and address the cause of the SSO that enters surface waters, and
8 employ the following measures to prevent future overflows: (a) if the SSO is
9 caused by a structural defect, then immediately spot repair the defect or replace the
10 entire line; (c) if the defect is non-structural, such as a grease blockage or
11 vandalism to a manhole cover, then perform additional maintenance or cleaning,
12 and any other appropriate measures to fix the non-structural defect.

13 F. Creation of website capacity to track information regarding SSOs from
14 DEFENDANT's sewage collection system, or in the alternative, the creation of
15 a link from DEFENDANT's website to the State Water Resources Control
16 Board's California Integrated Water Quality System SSO Public Reports.

17 38. Order DEFENDANT to pay civil penalties of \$27,500.00 per violation per day for its
18 violations of the CWA;

19 39. Order DEFENDANT to pay the reasonable attorneys' fees and costs of RIVER WATCH
20 (including expert witness fees), as provided by 33 U.S.C. § 1365(d) and applicable California
21 law; and,

22 40. For such other and further relief as the court deems just and proper.

23
24 DATED: November 19, 2012



JERRY BERNHAUT
Attorney for Plaintiff
NORTHERN CALIFORNIA RIVER WATCH

EXHIBIT A

Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402
Phone 707-528-8175 Fax 707-528-8675
lhm28843@sbeglobal.net



***VIA CERTIFIED MAIL -
RETURN RECEIPT REQUESTED***

July 17, 2012

City Clerk
City Council
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Re: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear City Clerk and Members of the City Council:

NOTICE

The Clean Water Act ("CWA") § 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA § 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of the intent to sue to the alleged violator, the Environmental Protection Agency ("EPA") and the State in which the violations occur.

This NOTICE is written on behalf of Northern California River Watch ("River Watch") which hereby places the City of Santa Clara, hereafter referred to as "the Discharger" on notice, that following the expiration of sixty (60) days from the date of this NOTICE, River Watch intends to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, permit condition or requirement, a Federal or State Order or Plan issued under the CWA, in particular, but not limited to CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Regional Water Quality Control Board, San Francisco Bay Region's Water Quality Control Plan, or "Basin Plan," as exemplified by violations of permit conditions or limitations in the Discharger's National Pollutant Discharge Elimination System ("NPDES") Permits, pertaining to the Discharger's operation of its sanitary sewage collection system.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharge of pollutants is prohibited with the exception of enumerated statutory exceptions. One such exception authorizes a polluter, who has been issued a permit pursuant to CWA § 402, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the 33 U.S.C. § 1311(a) prohibition, such that violation of a permit limit places a polluter in violation of 33 U.S.C. § 1311(a) and thus in violation of the CWA. Private parties may bring citizens' suits pursuant to 33 U.S.C. § 1365 to enforce effluent standards or limitations, which are defined as including violations of 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f)(1).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the EPA to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria. See 33 U.S.C. § 1342(b). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards, to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating discharges in the region at issue in this NOTICE is the Regional Water Quality Control Board, San Francisco Bay Region ("RWQCB").

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. *The specific standard, limitation, or order alleged to have been violated.*

To comply with this requirement River Watch identifies herein the NPDES Permits of the City of Santa Clara (in conjunction with the San Jose/Santa Clara Water Pollution Control Plant,) which govern the Discharger's operation of its sewage collection system, and also specifically identifies the applicable permit standard, limitation or condition being violated. A violation of the Permit is a violation of the CWA.

2. *The activity alleged to constitute a violation.*

Most often the Discharger's NPDES Permit limitations being violated are self-explanatory and an examination of language in the Permit is sufficient to inform the Discharger of the violation, especially since the Discharger is responsible for complying with that Permit conditions. In addition, River Watch has set forth narratives describing with particularity the activities leading to violations and has incorporated by reference the

Discharger's own records and other public documents in the Discharger's possession or otherwise available to the Discharger regarding its NPDES Permit, compliance with that Permit and any other information designed to inform the Discharger or the public.

3. *The person or persons responsible for the alleged violation.*

The person or persons responsible for the alleged violations is the City of Santa Clara, identified and those of its employees responsible for compliance with its NPDES Permits.

4. *The location of the alleged violation.*

The location or locations of the various violations are identified in the Discharger's Permits and also in records created and/or maintained by or for the Discharger which relate to the Discharger's sewer collection system and related activities as further described in this NOTICE.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

River Watch has examined records of the RWQCB and the Discharger for the period from July 7, 2007 through July 7, 2012. The range of dates covered by this NOTICE is from July 7, 2007 through July 7, 2012. River Watch will from time to time update this NOTICE to include all violations which occur after the range of dates currently covered by this NOTICE. Some of the violations are continuous and therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The full name, address, and telephone number of the person giving notice appears near the end of this NOTICE under CONTACT INFORMATION.

DISCHARGER'S OPERATION

The Discharger owns the San Jose/Santa Clara Water Pollution Control Plant ("Plant") through a Joint Powers Agreement with the City of San José. The City of San José operates the Plant as the administering agency of the Joint Power Agreement. The City of San José and the City of Santa Clara individually own and operate their respective sewage collection systems. The Discharger's operation of its sewage collection system is currently regulated under Order No. R2-2009-0038, NPDES Permit No. CA0037842, (previously Order No. R2-2003-0085) which also regulates the Plant. The Discharger's operation of its

sewage collection system is also regulated under the Statewide General Waste Discharge Requirements For Sanitary Sewer Systems, Order No. 2006-003-DWQ ("Statewide WDR,") adopted on May 2, 2006.

The Discharger provides sewage collection service to a population of approximately 110,000 within the Discharger's city limits. The Discharger's sanitary sewer system serves residential customers as well as commercial and industrial users. The sanitary sewer system consists of approximately 270 miles of sewer mains. Private property owners own the entire length of the service lateral associated with their property; however, the Discharger maintains as a public service the lower portion – from the property line cleanout to the main line – provided a property line cleanout exists and the Discharger is made aware of any structural defects or overflows. The Discharger's sanitary sewer system also includes 2 metered pump stations and 4 smaller, un-metered pump stations. The Santa Clara City Council is the governing body of the Discharger's sewer utility.

The Discharger's sewage collection system includes sewer lines which are now approximately 100 years old. A substantial portion of the sewer lines are 50 years old or older. The Discharger's ageing sewage collection system has historically experienced high inflow and infiltration ("I/I") during wet weather. The structural defects in the Discharger's collection system, which allow I/I into the sewer lines, results in a build-up of pressure which causes sewage system surface overflows ("SSOs"). Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals and storm drains which are connected to adjacent surface waters such as Stevens Creek, Saratoga Creek and South San Francisco Bay, all waters of the United States.

As recorded in the California Integrated Water Quality System ("CIWQS") Interactive SSO Reports, the Discharger's sewage collection system has experienced 19 SSOs during the period June 14, 2007 to June 10, 2012, with a combined volume of 7,041 gallons, 185 gallons of which reached surface waters, according to the Discharger's field reports. For example on March 20, 2009, a spill occurred at 2665 South Drive. According to the spill report, the total volume was 930 gallons, 140 gallons of which reached a surface water.

River Watch also alleges that the Discharger regularly underestimates the duration of its SSOs, thereby underestimating and inaccurately reporting the volume of its SSOs and the volume which reaches gutters, canals and storm drains and adjacent surface waters. The Discharger's Spill Reports, submitted to the State via the CIWQS Interactive SSO Reporting Program, routinely report the estimated spill start time, the time the sewer agency was notified of the spill and the operator arrival time as exactly the same time. It is highly unlikely that these events occurred simultaneously.

In the above-referenced spill report, the spill start time, time the sewer agency was notified and operator arrival time were all listed as 2009-03-20 13:45. Given the strong likelihood that the actual spill start time was significantly earlier than the reported spill start time, the duration substantially longer, and the fact that the volume is estimated as the product of duration multiplied by the estimated flow rate, one can be virtually certain that the actual spill volume was substantially greater than the reported volume, and the actual volume discharged to the adjacent creek substantially greater than the reported volume.

This clear lack of any good faith effort to make realistic estimates of spill start times undermines the reliability of volume estimates.

The reporting of the start time, notification and arrival times as simultaneous appears to be a common practice by the Discharger. On September 15, 2011, a spill occurred at 1700 Civic Center Drive. The Spill Report listed the the start time, notification and arrival times as 9:45. According to the Report the spill reached a storm drainpipe, but all of the wastewater was fully captured and returned to the sanitary sewer system, so there was no discharge to a surface water. In light of the high likelihood that the volume was under-reported, for the reasons stated above, the claim that no untreated wastewater discharged to a surface water is suspect. The reliability of this Report is further undermined by the anomaly that the estimated spill volume is listed as 250 gallons and the estimated volume of spill recovered is listed as 1,000 gallons.

In addition to surface overflows which discharge over land into surface waters, underground leakages (“exfiltration”) caused by pipeline cracks and other structural defects result in discharges to adjacent surface waters via underground hydrological connections. Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines, have verified the contamination of the adjacent waters with untreated sewage.¹ River Watch alleges that such discharges are continuous wherever ageing, damaged structurally defective sewer lines in the Discharger’s sewage collection system are located adjacent to surface waters, including Stevens Creek, Saratoga Creek and South San Francisco Bay.

The Discharger’s unlawful discharge of untreated wastewater is a significant contribution to the degradation of South San Francisco Bay, and tributary waters, such as, Stevens Creek and Saratoga Creek, with serious adverse effects on the beneficial uses of

¹ See the Report of the Human Marker Study issued in July of 2008 and conducted by Dr. Michael L. Johnson, U.C. Davis water quality expert, performed for the City of Ukiah, finding the presence of human derived bacteria in two creeks adjacent to defective sewer lines.

those waters. River Watch members residing in the area have a vital interest in bringing the Discharger's operations of its sewage collection system into compliance with the CWA.

REMEDIAL MEASURES REQUESTED

River Watch believes the following remedial measures are necessary to bring the Discharger into compliance with its NPDES Permits and with the Basin Plan, and to prioritize remedial measures to reflect the biological impacts of the Discharger's ongoing non-compliance:

DEFINITIONS

- A. **Condition Assessment:** A report that comprises inspection, rating, and evaluation of the existing condition of a sewer collection system. Inspection is based upon closed circuit television ("CCTV") inspections for gravity mains; manhole inspections for structural defects; and, inspections of pipe connections at the manhole. After CCTV inspection occurs, pipe conditions are assigned a grade based on the Pipeline Assessment and Certification Program ("PACP") rating system, developed by the National Association of Sewer Service Companies. The PACP is a nationally recognized sewer pipeline condition rating system for CCTV inspections.
- B. **Full Condition Assessment:** A Condition Assessment of all sewer lines in the sewer collection system with the exception of sewer lines located within two hundred (200) feet of surface waters.
- C. **Surface Water Condition Assessment:** A Condition Assessment of sewer lines in the sewer collection system located within two hundred (200) feet of surface waters, including gutters, canals and storm drains which discharge to surface waters.
- D. **Significantly Defective:** A sewer pipe is considered to be Significantly Defective if the pipe's condition receives a grade of 4 or 5 based on the PACP rating system. The PACP assigns grades based on the significance of the defect, extent of damage, percentage of flow capacity restriction, and/or the amount of pipe wall loss due to deterioration. Grades are assigned as follows:

- 5 – Most significant defect
- 4 – Significant defect
- 3 – Moderate defect

2 – Minor to moderate defect

1 – Minor defect

REMEDIAL MEASURES

A. SEWAGE COLLECTION SYSTEM INVESTIGATION AND REPAIR

1. The repair or replacement of all sewer lines in the Discharger's sewage collection system located within two hundred (200) feet from surface waters, including gutters, canals and storm drains which discharge to surface waters, which have been CCTV'd within five (5) years and which are Significantly Defective.
2. The completion of Surface Water Condition Assessment of sewer lines which have not been CCTV'd within five (5) years.
3. Within one (1) year after completion of the Surface Water Condition Assessment under section A.2. above, the Discharger will repair or replace all sewer lines which have been found to be Significantly Defective.
4. With respect to sewer lines that receive a Grade of 3 based on the PACP rating system, the Discharger will ascertain whether such lines need to be repaired or re-CCTV'd.
5. Amendment of the Discharger's long term Capitol Improvements Plan to provide for a Condition Assessment of its full sewer collection system on a six (6) year cycle, so that the entire system will be CCTV'd every six (6) years.

B. SEWER SYSTEM OVERFLOW RESPONSE AND REPORTING

1. Modification of the Discharger's SSO report form to include the method or calculation used for estimating total spill volume, estimating spill volume that reached surface waters and estimating spill volume recovered.
2. Creation of a listing of nearby residents or business operators who have been contacted to attempt to establish the SSO start time, duration, and flow rate.
3. Taking of photographs of the manhole flow at the SSO site and the San Diego Method array, if applicable to the SSO; or other photographic evidence that may aid in establishing the spill volume.

4. A requirement for water quality sampling and testing whenever it is estimated that fifty (50) gallons or more of untreated or partially treated waste water enters surface waters. Constituents tested for to include: Ammonia, Fecal Coliform, BOD and a CAM 17 toxic metals analysis. If any of the above-listed constituents threaten to exceed water quality objectives necessary to protect the designated beneficial uses of WARM, WILD, REC-1 or REC-2 as set forth in Basin Plan, the Discharger will immediately repair or replace the pipeline determined to be the source of the SSO.
5. The creation of web site capacity to track information regarding SSOs; or, in the alternative, the creation of a link from the Discharger's web site to the State Water Resources Control Board's CIWQS SSO Public Reports. The Discharger will notify all customers and other members of the public of the existence of the web based program, including a commitment to respond to private parties submitting overflow reports.

C. SUPPLEMENTAL ENVIRONMENTAL PROJECT - CLEANOUT INSTALLATION AND PRIVATE LATERAL REPLACEMENT FUND PROGRAM

1. Set up of a revolving loan program to provide partial loans for the replacement or repair of private sewer laterals, including installation of property line cleanouts ("loan program").
 - a. An investment of \$55,000.00 by the Discharger into the loan program.
 - b. The loan program will provide a low interest loan to eligible property owners in an amount not to exceed \$2,500.00 for each eligible private sewer lateral requiring repair or replacement, and/or property line cleanout installation. A property owner is considered eligible for the loan program if the Discharger determines that the private sewer lateral is failing, and/or that the property does not have a property line cleanout, and the repair or replacement and/or installation can be completed within one hundred twenty (120) days of the application for the loan.
 - c. Interest rate, financing term, financing amount, and terms of repayment for the loan program to be set by the Discharger.

2. The Discharger will publicize, advertise, and otherwise promote the availability of the loan program to property owners within its sewage collection system, and shall set forth procedures for eligible property owners to apply for the loan program. The Discharger will negotiate group rates with the contractor repairing or replacing a main line, for cleanout installation and lateral repair in conjunction with repair/replacement of the main line to which a group of private laterals are attached, and publicize said group rates. The group rate shall be determined after the Discharger CCTV's the private laterals and determines how many of the eligible property owners will participate in the program.

VIOLATIONS

River Watch contends that from July 7, 2007 through July 7, 2012 the Discharger has violated the requirements of the its NPDES Permits, the Basin Plan and the Code of Federal Regulations as those requirements are referenced in the Discharger's NPDES Permits, and that said violations are continuing. They are evidenced and reported in the Discharger's Self Monitoring Reports, its testing data compiled in compliance with its Permits or other orders of the RWQCB, other documentation filed with the RWQCB or in the Discharger's possession; and, as evidenced by unpermitted discharges due to failures in the Discharger's sewage collection system.

The violations, established in Self Monitoring Reports, raw data and records of the RWQCB, include, but are not limited to, the following categories in the Discharger's NPDES Permits:

Discharge Prohibitions

<u>Violations</u>	<u>Description</u>
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1800	Collection system overflows caused by underground exfiltration - Events in which untreated sewage is discharged from the collection system prior to reaching the Plant. Underground discharges are alleged to have been continuous throughout the 5 year period from July 7, 2007 to July 7, 2012.
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(Order No. R2-2003-0085, Discharge Prohibitions A.6)

(Order No. R2-2009-0038, Discharge Prohibitions , III.D)

Evidence to support the allegation of underground discharge of raw sewage exists in the Discharger's own mass balance data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, influent flow volumes

to the Plant reported in Self Monitoring Reports, video inspection of the sewage collection system, and testing of waterways adjacent to sewer lines, including creeks ,wetlands, rivers and South San Francisco Bay for nutrients pathogens and other constituents indicating sewage contamination, such as caffeine.

<u>Violations</u>	<u>Description</u>
25	SSOs, as evidenced in the State Water Resource Control Board's CIWQS Interactive SSO Public Reports, including those reports discussed above. Also, unrecorded surface overflows witnessed by local residents, and surface overflows which allegedly reached a surface water but were inaccurately reported as not having reached a surface water.

(Order No. R2-2003-0085, Discharge Prohibitions A.6)
(Order No. R2-2009-0038, Discharge Prohibitions , III.D)

Order No.R1-2003-0085, Discharge Prohibition A.6: "Discharges of water, materials, or wastes other than storm water, which are not otherwise authorized by this NPDES permit, to a storm drain system or waters of the State are prohibited."

Order No. R1-2009-0038, Discharge Prohibitions III.D: "Any sanitary sewer overflow that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited"

Monitoring Requirements

<u>Violations</u>	<u>Description</u>
20	Failure to monitor, report or adequately describe violations - The majority of these violations occur due to a failure to report violations of Discharge Prohibitions A.6. of Order No. R2-2003-0085 and Discharge Prohibitions III.D of Order No. R2-2009-0038, as well as failure to adequately describe reported violations of said provisions.

CONTACT INFORMATION

River Watch is a non-profit corporation dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California. River Watch is organized under the laws of the State of California. Its address is P.O. Box 817, Sebastopol, CA 95472 , www.ncriverwatch.org.

River Watch has retained legal counsel with respect to the issues raised in this NOTICE. All communications regarding the same should be addressed to:

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CONCLUSION

The violations as set forth in this NOTICE effect the health and enjoyment of members of River Watch who reside and recreate in the affected communities. These members use the affected watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, shell fish harvesting, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the Discharger's violations of the CWA as alleged in this NOTICE.

River Watch believes this NOTICE sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends to file a citizen's suit under CWA § 505(a) against the Discharger for the violations identified in this NOTICE. During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations noted. However, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when that notice period ends.

Very truly yours,



Jerry Bernhaut

JB:lhbm

cc: Richard E. Nosky, Jr.
City Attorney
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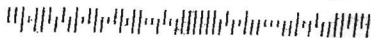
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